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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 JONATHAN SAPAN,

12 Plaintiff,

13 v.

14 SOLARMAX TECHNOLOGY, INC.,  
15 a California corporation, et al.,  
16 Defendants.  
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Case No.: 15cv897-MMA-MDD

**ORDER GRANTING IN PART  
AND DENYING IN PART  
ATTORNEY CHRISTOPHER  
REICHMAN'S MOTION TO  
RECONSIDER ORDER IMPOSING  
SANCTIONS [ECF No. 28]**

18 Pending before this Court is Plaintiff's Counsel Christopher  
19 Reichman's Motion for Reconsideration re: Order Imposing Sanctions. (ECF  
20 No. 28). On September 29, 2015, following notice and an opportunity to be  
21 heard, this Court issued an Order Imposing Sanctions on Mr. Reichman for  
22 his tardiness in appearing at the at the further Early Neutral  
23 Evaluation/Case Management Conference on August 21, 2015, his failure to  
24 appear telephonically at the Settlement Disposition Conference on  
25 September 8, 2015, and his failure to appear at the September 29, 2015,  
26 Order to Show Cause hearing arising from his prior failure to appear. (ECF

No. 26). The Court imposed sanctions in the amount of \$1,000.00 due by October 16, 2015, ordered Mr. Reichman to self-report to the California State Bar by October 16, 2015, and stated the Court would refer this matter to this Court's bar Disciplinary Committee. (*Id.*).

On October 9, 2015, Mr. Reichman filed this motion to reconsider the Order Imposing Sanctions. (ECF No. 28). Mr. Reichman acknowledges that sanctions may be appropriate, but argues that the monetary fine and the reporting requirements are excessive and that magistrate judges, such as the undersigned, lack authority to impose sanctions for the conduct at issue. (*Id.*).

The Court finds that it has the authority to impose these sanctions pursuant to Rule 16(f), Rule 83(a), and Local Rules 83.1 and 83.5, as explained below. Nevertheless, the Court is inclined to amend the sanctions imposed by reducing the monetary sanction to \$500.00 and eliminating the requirement that Mr. Reichman self-report to the California Bar. Accordingly, the Court **GRANTS IN PART** and **DENIES IN PART** Mr. Reichman's motion for reconsideration.

### **1. Procedural History**

On August 6, 2015, following the initial Early Neutral Evaluation/Case Management Conference in this case, the Court ordered a further conference to be held telephonically, with attorneys only required to participate, on August 21, 2015. (ECF No. 16). Defendant's counsel appeared as required. Counsel for Plaintiff, Christopher Reichman, did not call in as required. The Court's clerk attempted to contact Attorney Reichman, who returned the Court's call several minutes later, stating he did not have the matter on his calendar. After Mr. Reichman finally called

1 in, the Court held the conference and based upon the statements of counsel  
2 that they had settled the case, ordered both counsel to attend a telephonic  
3 Settlement Disposition Conference on September 8, 2015. (ECF No. 19).  
4 The Order required counsel to appear by telephone unless a joint motion to  
5 dismiss the case was filed. By the date of the hearing, no motion had been  
6 filed. Defendant's counsel appeared as required. Attorney Reichman did  
7 not appear. The Court's clerk, again left a message for Mr. Reichman. Mr.  
8 Reichman later returned the call, too late to attend the hearing, and again  
9 offered the excuse that the conference had not been calendared.

10 On September 21, 2015, this Court issued an Order to Show Cause  
11 ("OSC") requiring Mr. Reichman to appear personally in court on September  
12 29, 2015, at 9:45 a.m., and explain why he should not be sanctioned for  
13 failing to attend the Settlement Disposition Conference. (ECF No. 24). Mr.  
14 Reichman also was provided the opportunity to submit a meaningful  
15 written statement regarding his failure to appear no later than September  
16 24, 2015. (*Id.*). Mr. Reichman did not submit a written statement nor  
17 appear as required.

18 On September 29, 2015, this Court held the hearing on the OSC, but  
19 Mr. Reichman failed to appear at the OSC hearing. (ECF No. 25).  
20 Consequently, the Court issued the Order Imposing Sanctions, which  
21 requires Mr. Reichman to pay a \$1,000.00 fine, self-report to the California  
22 Bar, and states that this Court will refer the matter to this District's  
23 Disciplinary Committee. (*Id.*).

24 On October 9, 2015, Mr. Reichman filed this Motion to Reconsider the  
25 Order Imposing Sanctions. (ECF No. 28).  
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1        **2. Standard**

2            **a. Rule 16(f)**

3            In the Ninth Circuit, magistrate judges have the authority to sanction  
 4 attorneys for failing to appear at pretrial conferences pursuant to Rule 16(f).  
 5 FED. R. CIV. P. 16(f); *see Tamura v. F.A.A.*, 908 F.2d 977, \*3 (9th Cir. 1990)  
 6 (unpublished) (assuming without deciding that magistrate judges have  
 7 power to impose Rule 16(f) sanctions); *see also, Ayers v. City of Richmond*,  
 8 895 F.2d 1267, 1269 (9th Cir. 1990); *Ford v. Alfaro*, 785 F.2d 835, 837 (9th  
 9 Cir. 1986) (court did not question magistrate judge's authority to issue Rule  
 10 16 sanctions); *Grimes v. City & Cnty. of San Francisco*, 951 F.2d 236, 240  
 11 (9th Cir. 1991) (affirming magistrate judge's authority to sanction under  
 12 FED. R. CIV. P. 37); *Maisonville v. F2 Am., Inc.*, 902 F.2d 746, 747 (9th Cir.  
 13 1990) (affirming magistrate judge's authority to sanction under FED. R. CIV.  
 14 P. 11).

15            Magistrate judges routinely exercise this authority. *See, e.g., Medina v.*  
 16 *Pile Trucking Inc.*, Case No.: 11cv6329-PJW, 2012 WL4742424, \*3 (C.D.  
 17 Cal. Oct. 3, 2012) (Ghandi, J.) (Magistrate Judge Ghandi imposed sanctions  
 18 under Rule 16 for counsels' failure to appear at settlement conference); *CLM*  
 19 *Partners LLC v. Fiesta Palms, LLC*, Case No.: 22cv1387-PMP-CWH, 2013  
 20 WL 6388760, \*1-\*4 (D. Nev. Dec. 5, 2013) (Hoffmann, C.W., Jr.) (After  
 21 thorough and well-reasoned analysis, Magistrate Judge Hoffmann rejected  
 22 argument that magistrate judges do not have authority to impose Rule 16(f)  
 23 sanctions for nonappearance of attorney at settlement conference).

24            Rule 16(f) permits the court to order attorneys and unrepresented  
 25 parties to appear for one or more pretrial conferences for several purposes,  
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1 including “facilitating settlement.” FED. R. CIV. P. 16(a)(5). “At any pretrial  
 2 conference, the court may consider and take appropriate action” on several  
 3 matters, including “facilitating in other ways the just, speedy, and  
 4 inexpensive disposition of the action.” FED. R. CIV. P. 16(c)(2)(P). Rule 16(f)  
 5 authorizes the court to issue any just sanctions if a party or its attorney “(A)  
 6 fails to appear at a scheduling or other pretrial conference; (B)... ; or (C)  
 7 fails to obey a scheduling or other pretrial order.” Further, “[i]nstead of or  
 8 in addition to any other sanction, the court must order” the attorney or  
 9 party “to pay the reasonable expenses—including attorney’s fees—incurred  
 10 because of any noncompliance with this rule, unless the noncompliance was  
 11 substantially justified or other circumstances make an award unjust.” FED.  
 12 R. CIV. P. 16(f)(2).

13 A bad faith finding is not required to impose Rule 16(f) sanctions. *Lucas*  
 14 *Automotive Engineering, Inc. v. Bridgestone/Firestone, Inc.*, 275 F.3d 762,  
 15 769 (9th Cir. 2001); *Ayers*, 895 F.2d at 1270; *CLM Partners LLC*, 2013 WL  
 16 6388760 at \*2; *Harrell v. U.S.*, 117 F.R.D. 86 (E.D.N.C. Sept. 10, 1987). As  
 17 one magistrate judge explained,

18 Unlike Rule 11, for example, Rule 16 proscribes certain  
 19 acts regardless of purpose. Failure to attend a pre-trial  
 20 conference falls within this category. Improper motive, bad-  
 21 faith, even reckless behavior, is not a prerequisite for  
 22 finding a violation of the Rule. So long as the court is  
 23 convinced counsel or his office received proper and timely  
 notice, a negligent failure to attend the scheduled conference  
 amounts to a violation of the Rule.

24 *Id.* at 88 (rejecting argument that Rule 16(f) sanctions require a bad faith  
 25 finding, but reversing fine for due process reasons).  
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1                   **b. Local Rules adopted pursuant to Rule 83(a)**

2                   The Southern District’s Local Civil Rules, particularly Rule 83.1,  
3                   adopted pursuant to Federal Rule of Civil Procedure 83(a), also authorize  
4                   magistrate judges to impose sanctions against attorneys for failing to  
5                   appear as ordered. Local Rule 83.1, titled “Sanctions for Noncompliance  
6                   with Rules,” states:

7                   a. Failure of counsel or of any party to comply with these  
8                   rules, with the Federal Rules of Civil or Criminal Procedure,  
9                   or with any order of the court may be ground for imposition  
10                  by the court of any and all sanctions authorized by statute  
11                  or rule or within the inherent power of the court, including,  
12                  without limitation, dismissal of any actions, entry of default,  
13                  finding of contempt, imposition of monetary sanctions or  
14                  attorneys’ fees and costs, and other lesser sanctions.

15                  b. For violations of these Local Rules or of a specific court  
16                  order, the court may, in imposing monetary sanctions, order  
17                  that the monetary sanctions be paid to the Miscellaneous  
18                  Fines, Penalties and Forfeitures, Not Otherwise Classified,  
19                  fund of the United States Treasury.

20                  Civ. L.R. 83.1 (emphasis added). Local Rule 1.1(e)(5) broadly defines  
21                  “Court” to include the assigned district judge or magistrate judge.

22                  Rule 83.5, entitled “Discipline,” states:

23                  In the event any attorney engages in conduct which may  
24                  warrant discipline or other sanctions, the court or any judge  
25                  may, in addition to initiating proceedings for contempt  
26                  under Title 18 U.S.C. and Rule 42, FED. R. CRIM. P., or  
                    imposing other appropriate sanctions, refer the matter to  
                    the disciplinary body of any court before which the attorney  
                    has been admitted to practice.

                    Civ. L.R. 83.5 (emphasis added). Local Rule 1.1(e)(14) specifies that “Judge”  
                    refers to any assigned district judge or magistrate judge.

Other local rules authorize magistrate judges to exercise broad authority over all pretrial proceedings, including status conferences. Local Rule 16.2 authorizes magistrate judges to hold status conferences and scheduling orders in any case which has been assigned to them for that purpose. Local Rule 16.3(e) specifies “[t]he judge conducting the settlement conference may schedule as many follow-up settlement conferences as the judge finds appropriate in light of the complexity of the matter or any circumstances of the case.” Local Rule 72.1 authorizes each magistrate judge to perform the duties prescribed in 28 U.S.C. § 636, subsections (a) and (b)(1)(A), and specifies “a magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.” CIV. L.R. 72.1(e)(3). Finally, Rule 72.1(h) broadly authorizes magistrate judges to “[e]xercise general supervision of civil calendars, conduct calendar and status calls,... conduct pretrial conferences, settlement conferences and related pretrial proceedings in civil cases....[and] [p]erform any additional duty not inconsistent with the Constitution and laws of the United States.”

### **3. Analysis**

Mr. Reichman failed to appear at the Settlement Disposition Conference and the hearing on the related Order to Show Cause, even though this Court notified him of all the proceedings by automatic Notices of Electronic Filings. This Court has the authority to sanction Mr. Reichman for his failure to appear at these pretrial proceedings and for disobeying this Court’s orders requiring him to appear under Rule 16, subsections (f)(A) and (f)(C). FED. R. CIV. P. 16(f); *Tamura*, 908 F.2d at \*3.



1 This Court also has the authority to sanction Mr. Reichman for his failures  
2 to appear pursuant to this District's Local Rules 83.1 and 83.5. Civ. L.R.  
3 83.1 (sanctions), 83.5 (referral to disciplinary authorities), and 1.1 (defining  
4 "Court" and "Judge" to include magistrate judges); FED. R. CIV. P. 83(a).

5 The Court rejects Mr. Reichman's argument that the settlement  
6 disposition conference was not a "pretrial" conference "since trial is no  
7 longer necessary." The very purposes of a settlement disposition conference  
8 is to ensure that the settlement is finalized, and, if the settlement falls  
9 through, to get the case back on track for trial. There can be no reasonable  
10 dispute that settlement disposition conference for cases that go to trial after  
11 the settlement falls through are "pretrial." The magistrate judge's  
12 authority to regulate the appearance of attorneys at settlement disposition  
13 conferences cannot be subject to post-hoc analysis turning on whether or not  
14 the case ultimately is tried, particularly since most cases are never tried.  
15 Mr. Reichman's motion for reconsideration does not address the reasons for  
16 his failure to appear at the OSC hearing.

17 The Court rejects as inapplicable Mr. Reichman's arguments that  
18 sanctions are improper under Rule 11 and the Court's inherent authority.  
19 Rule 11, which only applies to misrepresentations made to the court in  
20 pleadings, motions, and through advocacy, does not apply to the conduct at  
21 issue here—an attorneys' failure to appear. FED. R. CIV. P. 11. Inherent  
22 authority, as Mr. Reichman argues, requires a finding of conduct  
23 tantamount to bad faith, *Leon v. IDX Sys. Corp.*, 464 F.3d 951, 961 (9th Cir.  
24 2006), which is not apparent from Mr. Reichman's failures to appear.

25 Mr. Reichman did not address the Court's authority under Rule 16(f),  
26 Rule 83, and the Local Rules, which address the conduct at issue more



1 directly than Rule 11 or the Court's inherent power.

2 **4. Conclusion**

3 Magistrate judges in the Ninth Circuit have the authority under Rule  
4 16(f) to sanction attorneys who fail to appear at pretrial proceedings, as  
5 occurred here. Magistrate judges in this District also have the authority to  
6 sanction attorneys and refer them to disciplinary authorities under Civil  
7 Local Rules 83.1 and 83.5, adopted pursuant to Rule 83(a). Although this  
8 Court has the jurisdiction to impose these sanctions and provided sufficient  
9 notice to Mr. Reichman, the Court now exercises its authority to amend the  
10 sanctions by reducing the sanction to \$500.00 and eliminating the  
11 requirement that Mr. Reichman self-report the matter to the California  
12 State Bar. Consequently, Mr. Reichman's motion to reconsider is

13 **GRANTED IN PART and DENIED IN PART.**

14 **IT IS SO ORDERED.**

15 Dated: October 16, 2015

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17 Hon. Mitchell D. Dembin  
18 United States Magistrate Judge  
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